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Committee on the Peaceful Uses of Outer Space

Report of the Legal Subcommittee on its thirty-ninth session, held in Vienna from 27 March to 6 April 2000

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I. Introduction

A. Opening of the session

1. The Legal Subcommittee held its thirty-ninth session at the United Nations Office at Vienna from 27 March to 6 April 2000 under the chairmanship of Vladimír Kopal (Czech Republic).

2. At the opening (622nd) meeting, on 27 March, the Chairman made a statement briefly describing the new agenda structure and the work to be undertaken by the Subcommittee at its thirty-ninth session. The Chairman's statement is contained in an unedited verbatim transcript (COPUOS/Legal/T.622).

B. Adoption of the agenda

3. At its opening meeting, the Legal Subcommittee adopted the following agenda:

1. Opening of the session.
2. Statement by the Chairman.
3. General exchange of views.
4. Status of the international treaties governing the uses of outer space.
5. Information on the activities of international organizations relating to space law.
6. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.
7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.
8. Review of the status of the five international legal instruments governing outer space.
9. Review of the concept of the "launching State".
10. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session.

C. Attendance

4. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakhstan, Kenya, Lebanon, Mexico, Morocco, Netherlands, Nigeria, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

5. Representatives of the following specialized agencies of the United Nations system and other international organizations attended the session: United Nations Educational, Scientific and Cultural Organization (UNESCO), International Telecommunication Union (ITU), European Organization for the Exploitation of Meteorological Satellites (EUMETSAT), European Space Agency (ESA), International Astronautical Federation (IAF) and International Mobile Satellite Organization (IMSO).

6. At the 622nd, 624th and 629th meetings, on 27, 28 and 30 March, the Chairman informed the Subcommittee that requests had been received from the Permanent Representatives of Bolivia, Costa Rica, Guatemala, Panama, Peru, Saudi Arabia, Slovakia and Sri Lanka to attend the session. The Subcommittee agreed that, since the granting of observer status was the prerogative of the Committee on the Peaceful Uses of Outer Space, it could take no formal decision on the matter, but that the representatives of those countries might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

7. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies and other organizations attending the session and of staff members of the secretariat of the Subcommittee is contained in document A/AC.105/C.2/INF/32.

D. Organization of work

8. In accordance with decisions taken at its opening meeting, the Legal Subcommittee organized its work as follows:

(a) In accordance with the recommendation endorsed by the Committee on the Peaceful Uses of Outer Space,[1] the Subcommittee agreed to suspend, for the current session, its Working Group on agenda item 7;

(b) The Subcommittee re-established its Working Group on agenda item 6, open to all members of the Subcommittee, and elected Héctor Raúl Pelaez (Argentina) to serve as its Chairman;

(c) In accordance with the work plan agreed upon by the Committee on the Peaceful Uses of Outer Space[2] and endorsed by the General Assembly, in its resolution 54/67 of 6 December 1999, the Subcommittee established a working group on agenda item 8, open to all members of the Subcommittee, and elected Kai-Uwe Schrogl (Germany) to serve as its Chairman;

(d) The Subcommittee began its work each day with a plenary meeting to hear delegations wishing to address it and then it adjourned and reconvened, when appropriate, as a working group.

9. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies. In view of that, the Chairman proposed and the Subcommittee agreed that a flexible organization of work should continue to serve as the basis for organizing the work of the Subcommittee with a view to making fuller use of the conference services available.

10. The Subcommittee noted with satisfaction that a symposium entitled "Legal Aspects of Commercialization of Space Activities", sponsored by the International Institute of Space Law (IISL) in cooperation with the European Centre for Space Law (ECSL), had been held following the 623rd meeting of the Legal Subcommittee, on 27 March 2000. The coordinator of the symposium was E. Fasan of IISL. Presentations were made by S. Doyle on "Space law and commercialization: overview of the current law in the light of new commercial developments", P. van Fenema on "Launch services", R. Jakhu on "Telecommunication and broadcasting" and G. Catalano Sgrosso on "Remote sensing". The Subcommittee agreed that IISL and the Centre should be invited to hold a further symposium on space law at the fortieth session.

11. The Legal Subcommittee recommended that its fortieth session be held from 2 to 12 April 2001.

E. Adoption of the report of the Legal Subcommittee

12. The Subcommittee held a total of 17 meetings. The views expressed at those meetings are contained in unedited verbatim transcripts (COPUOS/Legal/T.622-638).

13. At its 638th meeting, on 6 April, the Subcommittee adopted the present report and concluded the work of its thirty-ninth session.

II. General exchange of views

14. Statements were made by representatives of the following member States during the general exchange of views: Argentina, Australia, Brazil, China, Colombia, Cuba, Czech Republic, Egypt, France, Germany, Indonesia, Iran (Islamic Republic of), Japan, Morocco, Republic of Korea, Russian Federation and United States. The representative of Guatemala (on behalf of the Group of Latin American and Caribbean States) also made a statement. The views expressed by those representatives are contained in unedited verbatim transcripts (COPUOS/Legal/T.622-625).

15. At the 622nd meeting, on 27 March, the Director of the Office for Outer Space Affairs made a statement reviewing the work of the Office relating to the Legal Subcommittee and the development of space law.

16. The Subcommittee noted with satisfaction the creation by the Office for Outer Space Affairs of a preliminary database of publicly available national legislation relating to outer space and agreed that the Secretariat should continue its efforts to maintain and further develop the database.

17. The view was expressed that, since 2001 would mark the fortieth anniversary of the first flight of humans into outer space and the fortieth session of the Legal Subcommittee, the Subcommittee should consider how those events could be appropriately celebrated. In addition,

that delegation suggested that the Legal Subcommittee or the Committee on the Peaceful Uses of Outer Space should consider the possibility of contributing to the celebration of World Space Week (4-10 October 2000) and the final year of the twentieth century by holding a short special session at that time in New York.

18. Some delegations expressed the view that it would be desirable to expand the membership of the Committee on the Peaceful Uses of Outer Space and to allow the rotating members of the Committee to assume permanent membership.

III. Status of the international treaties governing the uses of outer space

19. At the 622nd meeting, on 27 March, the Chairman made an introductory statement on agenda item 4 and drew the attention of the Subcommittee to the fact that, on the basis of a recommendation of the Committee on the Peaceful Uses of Outer Space at its forty-second session, in 1999, the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee that the Subcommittee consider this new agenda item as a regular item in order to provide an opportunity for reports on any additional signature or ratification as well as on application of the outer space treaties.

20. The Chairman reported briefly to the Subcommittee on the current status of signatures and ratifications of the international treaties governing the use of outer space, in accordance with information provided to the Secretariat by the depositaries of those treaties. With the accessions of Indonesia and Liechtenstein and the succession of Saint Vincent and the Grenadines, the number of signatures and ratifications of the five United Nations treaties governing outer space was, as of February 2000, as follows:

(a) The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex, the "Outer Space Treaty") had 96 States parties and had been signed by 27 other States;

(b) The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex, the "Rescue Agreement") had 87 States parties and had been signed by 26 other States;

(c) The Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex, the "Liability Convention") had 81 States parties and had been signed by 26 other States;

(d) The Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex, the "Registration Convention") had 42 States parties and had been signed by 4 other States;

(e) The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex, the "Moon Agreement") had 9 States Parties and had been signed by 5 other States.

In addition, one intergovernmental organization had declared its acceptance of the rights and obligations provided for in the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; two intergovernmental organizations had declared their acceptance of the rights and obligations of the Convention on International Liability for Damage Caused by Space Objects; and two intergovernmental organizations had declared their acceptance of the rights and obligations of the Convention of Registration of Objects Launched into Outer Space.

21. It was noted that the information contained in *United Nations Treaties and Principles on Outer Space: a Commemorative Edition* (A/AC.105/722), including signatures and ratifications of the five United Nations treaties governing outer space, had been updated by the Secretariat and the additional information distributed as an insert to that booklet (A/AC.105/722/Add.1).

22. The Subcommittee welcomed the reports of member States on the current status of action being undertaken by States concerning accession to the five international legal instruments governing outer space and on action planned in that regard.

23. The Subcommittee had before it, for information, copies of notifications made in accordance with article 5 of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects launched into Outer Space by the Governments of Japan (A/AC.105/735) and the United States (A/AC.105/737) providing information on component parts of a space object that had returned to Earth in territory under their respective jurisdiction.

24. The view was expressed that, although the provisions of the treaties were managing well with the increasingly complex activities of outer space, member States should re-examine their own domestic legal regimes in order to

ensure that the provisions of the treaties were being properly implemented and, if necessary, should put in place appropriate domestic regulatory mechanisms to ensure effective compliance.

25. Some delegations expressed the view that the time had come for the Subcommittee to discuss the appropriateness and desirability of drafting a single comprehensive convention on space law, such as had been done in the case of the United Nations Convention on the Law of the Sea.[3]

26. The full text of the statements made by delegations during the discussion on agenda item 4 is contained in unedited verbatim transcripts (COPUOS/Legal/T.622-626).

IV. Information on the activities of international organizations relating to space law

27. At the 624th meeting, on 28 March, the Chairman made an introductory statement on agenda item 5 and drew attention to the fact that this was a new regular agenda item agreed upon by the Committee on the Peaceful Uses of Outer Space at its forty-second session and subsequently endorsed by the General Assembly in its resolution 54/67.

28. The Legal Subcommittee noted with satisfaction that various international organizations had been invited by the Secretariat to report to the Subcommittee on their activities relating to space law and agreed that a similar invitation should be extended by the Secretariat for the fortieth session of the Subcommittee, in 2001.

29. The Legal Subcommittee had before it two conference room papers (A/AC.105/C.2/2000/CRP.4 and A/AC.105/C.2/2000/CRP.10), which contained compilations of written reports from the following organizations of the United Nations system and other international organizations on their activities relating to space law: ITU, World Intellectual Property Organization, ECSL, ESA, IISL, IMSO and International Law Association.

30. In addition, representatives of the following international organizations reported to the Subcommittee on their activities relating to space law: ITU, ECSL, ESA, EUMETSAT, IISL, IMSO and International Institute for the Unification of Private Law (Unidroit).

31. The Subcommittee noted that the 43rd IISL Colloquium on the Law of Outer Space and the ninth Manfred Lachs Space Law Moot Court Competition would be held in Rio de Janeiro, Brazil, from 2 to 6 October 2000.

32. Some delegations expressed the view that the work being carried out under the auspices of Unidroit on the development of a new international regime governing security interests in high-value mobile equipment, such as space property, was most valuable and enjoyed considerable support, including within the private sector. The view was expressed that consideration of issues relating to such work should be placed as a single issue/item for discussion on the agenda of the Legal Subcommittee at its fortieth session.

33. The view was expressed that space-related intergovernmental organizations and their member States should consider the requirements for acceptance by those organizations of the rights and obligations under the provisions of certain of the United Nations treaties relating to outer space and the possible steps that might be taken in that regard to encourage wider adherence of such organizations to international space law.

34. The view was expressed that additional information relating to how the consequences of the privatization of space-related international organizations were being dealt with under the United Nations treaties relating to outer space would be most welcome.

35. The full text of the statements made by delegations during the discussion on agenda item 5 is contained in unedited verbatim transcripts (COPUOS/Legal/T.624-628 and 634).

V. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

36. At the 624th meeting, on 28 March, the Chairman made an introductory statement on agenda item 6.

37. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space[4] that the Legal Subcommittee, at its thirty-ninth session, taking into account the concerns of all countries, in particular those of developing countries, continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of ITU.

38. The Legal Subcommittee had before it the following documents:

(a) Report of the Legal Subcommittee on its thirty-eighth session (A/AC.105/721);

(b) Report of the Scientific and Technical Subcommittee on its thirty-seventh session (A/AC.105/736);

(c) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Add.1-5), which had been before the Legal Subcommittee at its thirty-seventh session;

(d) Working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted by Colombia to the Subcommittee at its thirty-fifth session;

(e) Note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), which had been before the Subcommittee at its thirty-sixth session.

39. The attention of the Legal Subcommittee was also drawn to two documents that had been updated by the Secretariat, in cooperation with ITU, in response to the recommendation of the Subcommittee at its thirty-eighth session (A/AC.105/721, para. 41). The first of the two documents was entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary orbit' with the existing regulatory procedures of the International Telecommunication Union" (A/AC.105/C.2/L.205/Rev.1) and the second was a conference room paper containing a compendium of documentation relating to the geostationary orbit (A/AC.105/C.2/2000/CRP.3/Rev.1).

40. Some delegations expressed the view that as the item on definition and delimitation of outer space and the utilization of the geostationary orbit dealt with two different issues, those issues could be divided into two sub-items and considered separately, which would facilitate the work of the Legal Subcommittee relating to the item.

41. Some delegations expressed the view that recent technological developments made it necessary for the Legal Subcommittee to continue its consideration of the question of the definition and delimitation of outer space, in particular relating to aerospace objects, by examining the documents that had been prepared relating to the issue and submitted to the Legal Subcommittee at previous sessions.

42. The view was expressed that in order to facilitate the discussion of aerospace objects, the Secretariat could update the analysis of replies received from member States since the Legal Subcommittee last considered the document entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from member States" (A/AC.105/635 and Add.1-5). The view was also expressed that it would be useful to the discussion of aerospace objects if the Secretariat investigated the possibility of making available to the Subcommittee the materials of the symposium on aerospace objects that had been held at the University of Rome.

43. The view was expressed that it was premature to develop any definition or delimitation of outer space when the lack of such a definition or delimitation had not caused any problems in conducting space activities and that an arbitrary and artificial definition or delimitation of outer space would render international law less useful and

effective. Another delegation expressed the view that a definition and delimitation of outer space were indispensable for member States to have a legal basis on which to regulate their national territories, as well as to resolve issues arising from collisions that could occur between aerospace objects and aircraft.

44. As mentioned in paragraph 8 (b) above, at its 622nd meeting, on 27 March, the Legal Subcommittee re-established its Working Group on agenda item 6 under the chairmanship of Héctor Raúl Pelaez (Argentina).

45. The Legal Subcommittee noted with appreciation the efforts undertaken by France and the other sponsors of the paper entitled "Some aspects concerning the use of the geostationary orbit" (A/AC.105/C.2/2000/CRP.7), which had been submitted to the Working Group in order to reach consensus on the question of the utilization of the geostationary orbit.

46. The Legal Subcommittee welcomed the agreement reached by the Working Group on the text of the paper contained in the conference room paper (A/AC.105/C.2/2000/CRP.7). The amended text, as adopted by the Working Group, was considered by the Subcommittee as a conference room paper, entitled "Some aspects concerning the use of the geostationary orbit" (A/AC.105/C.2/2000/CRP.9).

47. At its 631st meeting, on 31 March, the Legal Subcommittee finalized and adopted the second conference room paper. The agreed text of the paper (A/AC.105/C.2/L.221) is attached as annex III to the present report.

48. The Working Group on agenda item 6 held three meetings. At the 638th meeting, on 6 April, the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex I to the present report.

49. The full text of the statements made by delegations during the discussion on agenda item 6 is contained in unedited verbatim transcripts (COPUOS/Legal/T.624-631).

VI. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space

50. At the 625th meeting, on 28 March, the Chairman made an introductory statement on agenda item 7.

51. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its consideration of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (resolution 47/68), as a single issue and item for discussion.

52. The Legal Subcommittee recalled its recommendation, made at its thirty-eighth session and subsequently endorsed by the Committee,[1] that at its thirty-ninth session, consideration by the Working Group on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space again be suspended pending the results of the work of the Scientific and Technical Subcommittee, without prejudice to the possibility of reconvening the Working Group if, in the opinion of the Legal Subcommittee, sufficient progress had been made in the Scientific and Technical Subcommittee at its thirty-seventh session, in 2000, to warrant the reconvening of the Working Group.

53. As mentioned in paragraph 8 (a) above, at its 622nd meeting, the Legal Subcommittee agreed to suspend, for the thirty-ninth session, its Working Group on agenda item 7.

54. The Subcommittee had before it, for information, copies of a notification made in accordance with principle 4 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space by the Government of the United States (A/AC.105/677 and Add.1) providing information regarding the availability of the Cassini spacecraft safety assessment results.

55. Some delegations welcomed the work carried out by the Scientific and Technical Subcommittee at its thirty-seventh session on the item entitled "Use of nuclear power sources in outer space", under a multi-year work plan, the first year of which identified terrestrial processes and technical standards that might be relevant to nuclear power sources, including factors distinguishing nuclear power sources in outer space from terrestrial nuclear applications.

56. The view was expressed that various conventions adopted under the auspices of the International Atomic Energy Agency and documents published by the Agency were relevant to the work plan in the Scientific and Technical Subcommittee and that the views of the Agency were welcome in that regard.

57. The full text of the statements made by delegations during the discussion on agenda item 7 is contained in unedited verbatim transcripts (COPUOS/Legal/T.625-627).

VII. Review of the status of the five international legal instruments governing outer space

58. At the 626th meeting, on 29 March, the Chairman made an introductory statement on agenda item 8.

59. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee continue its review of the status of the five international legal instruments governing outer space in accordance with the proposed work plan for the agenda item that had been approved by the Subcommittee at its thirty-sixth session.

60. The Legal Subcommittee noted that 2000 was the final year of its agreed work plan and, accordingly, that at its current session the Subcommittee should, on the basis of the recommendations of the Working Group, consider and implement as appropriate the measures considered adequate to achieve the widest and fullest adherence to the treaties relating to outer space.

61. The Legal Subcommittee recalled the deliberations and recommendations of its Working Group on the item, convened at its thirty-eighth session under the chairmanship of Vassilios Cassapoglou (Greece). The report of the Working Group appeared in the report of the Subcommittee on its thirty-eighth session (A/AC.105/721, annex II).

62. The Legal Subcommittee also had before it:

(a) Note by the Secretariat on the review of the status of the five international legal instruments governing outer space (A/AC.105/C.2/L.210 and Add.1);

(b) Working papers on the subject submitted to the Subcommittee at its thirty-seventh session by:

(i) Germany, on behalf of the member States of ESA and States having signed cooperation agreements with ESA (A/AC.105/C.2/L.211/Rev.1, paras. 2-9);

(ii) The Russian Federation (A/AC.105/C.2/L.213).

63. The view was expressed that the structure proposed by the delegation of Mexico for the report of the Working Group at the thirty-eighth session of the Legal Subcommittee could form the basis for the final report of the Subcommittee on the item.

64. The view was expressed that the recommendations appearing in paragraphs 13 (a) and (c) of the previous report of the Working Group on this item (A/AC.105/721, annex II) were the most important and should be the focus of the Legal Subcommittee's work in the final year of the work plan. That delegation was also of the view that the Subcommittee should make a clear call for States seriously to consider adhering to what it termed "the four core instruments". In addition, States that had accepted those instruments should examine the extent to which they were being effectively implemented at the national level.

65. The view was expressed that while States should consider making a declaration accepting the binding nature of the decisions of the Claims Commission in the event of a dispute under the provisions of the Liability Convention, that was not necessarily the best process in view of the wide variety of legal and other mechanisms that might be available for settling space-related disputes.

66. Some delegations expressed the view that the Moon Agreement should be examined further with a view to identifying the reasons for its low level of ratification and signature by Member States and international organizations and to considering possible measures to address the situation. The view was expressed that, in that regard, the Secretariat should invite comments from those Member States and international organizations which had not ratified or accepted the Agreement as to their reasons for not having done so.

67. Some delegations expressed the view that, with the rapid evolution of technology and of the organization of space activities, the Legal Subcommittee needed to maintain its leading role in the development of legal principles and in the identification of improvements to the existing legal principles and instruments governing the peaceful uses of outer space. In that regard, the view was expressed that the Legal Subcommittee should engage in a discussion with a view to formulating detailed interpretations of the

existing legal principles and concepts, taking into account the experience acquired through application of the treaties as well as progress in and evolution of technologies and the law.

68. The view was expressed that if it was decided that any of the five international legal instruments governing outer space required amendment, such amendment could be formally proposed only by the States parties to the instruments in question, in accordance with international law and the actual provisions of the instruments. The Legal Subcommittee could not, even by consensus, make any such proposals for amendment or revision of the instruments, but was limited to simply assisting the States parties with an objective analysis. However, the view was also expressed that that did not conflict with the tasks currently being undertaken by the Subcommittee under the item.

69. The view was reiterated that the five international legal instruments governing outer space were, by their nature, interdependent and that a holistic approach should therefore be taken in their review and analysis in relation to possible future revision and amendment. In addition, that delegation was of the view that, should such revision or amendment be required, there would be no other choice but to develop a single, comprehensive treaty on outer space.

70. The view was expressed that the achievement of universal acceptance and implementation at the domestic level of the five international legal instruments governing outer space should remain the first priority, before seeking to reach any consensus on the need to improve the space law regime.

71. The view was expressed that some clarification of specific terms within the legal instruments governing outer space was required in order to strengthen their application. That delegation was of the view that such clarification should be made by means of annexes to the existing instruments or by other similar means appropriate under international law.

72. The view was expressed that the growing role and legal status of international organizations in space-related activities should be taken into account in any review of the international legal instruments governing outer space. That delegation was also of the view that the Secretariat should invite comments from those international organizations in that regard for consideration by the Subcommittee.

73. The view was expressed that, in order to raise awareness and to encourage States to consider ratifying or acceding to the five legal instruments governing outer space, focused and effective symposia and forums should be organized with the participation of representatives of Member States, international organizations and the Office for Outer Space Affairs to provide technical advice concerning the benefits that those States would enjoy from making such ratifications or accessions.

74. The view was expressed that the resulting intergovernmental discussions in the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee were themselves a valuable consequence of the three-year work plan on the item, which had focused attention on the five legal instruments as the core of international space law.

75. The Legal Subcommittee endorsed the recommendations of its Working Group that, in order to achieve the fullest adherence to the five international instruments governing outer space:

(a) States that had not yet become parties to the five international treaties governing outer space should be invited to consider ratifying or acceding to those treaties in order to achieve the widest applicability of the principles and to enhance the effectiveness of international space law;

(b) States should be invited to consider making a declaration in accordance with paragraph 3 of General Assembly resolution 2777 (XXVI) of 29 November 1971, thereby binding themselves on a reciprocal basis to the decisions of the Claims Commission established in the event of a dispute in terms of the provisions of the Liability Convention;

(c) The issue of the strict compliance by States with the provisions of the international legal instruments governing outer space to which they were currently parties should be examined further with a view to identifying measures to encourage full compliance, taking into account the interrelated nature of the principles and rules governing outer space.

76. The full text of the statements made by delegations during the discussion on agenda item 8 is contained in unedited verbatim transcripts (COPUOS/Legal/T.626-633).

VIII. Review of the concept of the "launching State"

77. At the 629th meeting, on 30 March, the Chairman made an introductory statement on agenda item 9.

78. The Chairman drew attention to the fact that the General Assembly, in its resolution 54/67, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee consider an agenda item entitled "Review of the concept of the 'launching State'", in accordance with the three-year work plan adopted by the Committee,[2] and that the Subcommittee establish a working group to consider the item.

79. In accordance with the work plan adopted by the Committee, the first year of the work on this item was allocated to special presentations on new launch systems and ventures. The Legal Subcommittee decided that the presentations should be made within the Working Group on agenda item 9.

80. The view was expressed that new launching technology, including mobile launchers, created some uncertainty in application of the concept of the "launching State" under the Liability Convention and the Registration Convention. That delegation was of the view that development of effective national legislation to implement the provisions of the Liability Convention was important to address any future launching accidents.

81. The view was expressed that the reason for including the item on the agenda, the privatization of space activities, was not an entirely new matter. Under article VI of the Outer Space Treaty, States bore international responsibility for all national activities in outer space, including activities carried out by non-governmental entities. Those activities required authorization and continuing supervision by the appropriate State. Both the Liability Convention and the Registration Convention contained adequate provisions for successfully handling any specific situation involving a private space launch. While it might be generally helpful to have an agreed definition of what "procuring" a space launch meant for the purposes of the above instruments, it should be realized that such an interpretation by the Legal Subcommittee would be a doctrinal one, because only States parties to an international treaty had the authority to provide an authentic interpretation of that treaty. That delegation also recalled that private companies and other non-governmental organizations were not subjects of international law and that the role of States under agreements relating to outer space was not undermined by the increasing activities of private entities in outer space.

82. The view was also expressed that, according to its mandate from the Committee on the Peaceful Uses of Outer Space, the Legal Subcommittee was to review the application, rather than provide interpretation, of the concept of the launching State, following the agreed three-year work plan. Some delegations noted that only States parties to treaties, rather than other bodies not necessarily composed of States parties, could establish authoritatively the manner in which those treaties were to be applied and interpreted.

83. The view was expressed that a State authorizing the launch of a space object, for instance through a licence or official registration, was a State "procuring the launch" of a space object under the Liability Convention and the Registration Convention.

84. However, the view was also expressed that authorization was not necessarily synonymous with procurement. That delegation was of the view that the language of the treaties relating to outer space was the most authoritative expression of the meaning of the treaties, supplemented in case of ambiguity by the actual practice of States in implementing the treaties.

85. The view was expressed that the topic for discussion under the second year of the work plan for "Review of the concept of the 'launching State'" should include consideration not only of the Liability Convention and the Registration Convention, but also of the other main treaties relating to outer space.

86. The attention of the Subcommittee was drawn to the fact that article 6 of the Rescue Agreement contains the term "Launching authority", which refers, *inter alia*, to international intergovernmental organizations responsible for launching.

87. The Subcommittee requested the Secretariat to prepare a paper setting out the key elements of existing national space legislation that, in the Secretariat's judgement, illustrated how States were implementing, as appropriate, their responsibilities to authorize and provide continuing supervision of non-governmental entities in outer space. The paper should also include additional information, such as information on state practice drawn, *inter alia*, from the special presentations on new launch systems and ventures at the thirty-ninth session of the Subcommittee. The paper could be prepared with assistance, as required, from member States and international organizations. The paper could be issued, if the Secretariat

considered it appropriate, as a single publication together with the compilation of documents requested by the Working Group under agenda item 9 (see annex II, para. 15). The paper could provide a starting point for discussion under the second year of the work plan (2001).

88. As mentioned in paragraph 8 (c) above, at its 622nd meeting, the Legal Subcommittee established a Working Group on agenda item 9. At its 629th meeting, the Legal Subcommittee elected Kai-Uwe Schrogl (Germany) Chairman of the Working Group.

89. The Working Group on agenda item 9 held four meetings. At its 638th meeting, on 6 April, the Legal Subcommittee endorsed the report of the Working Group, which is contained in annex II to the present report.

90. The full text of the statements made by delegations during the discussion on agenda item 9 is contained in unedited verbatim transcripts (COPUOS/Legal/T.629-637).

IX. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its fortieth session

91. At the 629th meeting, on 30 March, the Chairman made an introductory statement on agenda item 10.

92. The Chairman drew attention to the fact that this was a new agenda item agreed upon by the Committee on the Peaceful Uses of Outer Space at its forty-second session and subsequently endorsed by the General Assembly in its resolution 54/67. The new agenda item in fact replaced the informal consultations on new items for the agenda that the Legal Subcommittee had held at its previous sessions.

93. The Legal Subcommittee noted that, in view of the new agenda structure agreed upon by the Committee on the Peaceful Uses of Outer Space at its forty-second session, it would also need to consider under this item whether to propose retaining current items 7 and 8 on the agenda of its fortieth session.

94. The Legal Subcommittee recalled that, at its thirty-seventh and thirty-eighth sessions, in 1998 and 1999, respectively, the following items had been discussed for possible inclusion in its agenda:

(a) Commercial aspects of space activities (e.g. property rights, insurance and liability), proposed by the delegation of Argentina;

(b) Review of existing norms of international law applicable to space debris, proposed by the delegation of the Czech Republic;

(c) Legal aspects of space debris, proposed by the delegations of Brazil and the Czech Republic;

(d) Comparative review of the principles of international space law and international environmental law, proposed by the delegation of Chile;

(e) Review of the Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting and the Principles Relating to Remote Sensing of the Earth from Outer Space, with a view to possibly transforming those texts into treaties in the future, proposed by the delegation of Greece;

(f) Improvement of the Convention on Registration of Objects Launched into Outer Space, proposed by the delegation of Germany on behalf of the member States of ESA and States having signed cooperation agreements with ESA;

(g) Examination of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 as a model to encourage wider accession to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, proposed by the delegation of the Netherlands;

(h) Review of the concept of the "launching State", proposed by the delegation of Germany.

95. The Legal Subcommittee also recalled that:

(a) Spain had withdrawn its proposal entitled "Comparative study of the provisions of the law of the sea and international space law", noting that it had been similar to the proposal by the Netherlands;

(b) Brazil, Greece and the Netherlands had announced that their proposals could be considered at a later stage, as other items being considered could have higher priority;

(c) Argentina had submitted a working paper (A/AC.105/C.2/L.215) containing a work plan for the item that it had proposed, which had subsequently been annexed to the report of the Legal Subcommittee on the work of its thirty-eighth session (A/AC.105/721, annex III);

(d) Chile had announced that a work plan would be submitted with regard to its proposal;

(e) At its forty-second session, the Committee on the Peaceful Uses of Outer Space had agreed that a new item entitled "Review of the concept of the 'launching State'" should be included in the agenda of the Legal Subcommittee.[2] As a consequence of that agreement, the two proposals by Germany were no longer under consideration.

96. The Legal Subcommittee noted that Chile had withdrawn its proposal from consideration for inclusion in the agenda of the fortieth session of the Subcommittee as other items being considered could have higher priority, but that it would submit a working paper on the proposal at the fortieth session of the Subcommittee, in 2001.

97. The Legal Subcommittee noted that Argentina had proposed, as an alternative to the proposal contained in its working paper (A/AC.105/C.2/L.215), that a new single issue/item for discussion entitled "Commercial aspects of space activities" be included in the agenda of the fortieth session of the Legal Subcommittee.

98. The Legal Subcommittee noted that Greece had joined in sponsoring the proposal made by the Czech Republic of a new item entitled "Review of existing norms of international law applicable to space debris".

99. At the 632nd meeting, on 3 April, the delegation of the Russian Federation submitted a working paper (A/AC.105/C.2/L.220) containing a proposal for a new single issue/item for discussion entitled "Advisability of developing a single comprehensive United Nations convention on the law of outer space" to be included in the agenda of the fortieth session of the Legal Subcommittee.

100. During the course of discussions, the following additional proposals were made for new single issues/items for discussion to be included in the agenda of the fortieth session of the Legal Subcommittee:

(a) Matters relating to the low level of ratification of the Moon Agreement, proposed by the delegation of Australia;

(b) Consideration of the preliminary draft of the Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property, proposed by the delegation of Italy;

(c) Issues relating to protection of intellectual property rights in connection with outer space activities, proposed by the delegation of South Africa;

(d) Commercial aspects of space activities, proposed by the delegation of Argentina.

101. Some delegations expressed the view that the proposal of the Czech Republic would be appropriate for inclusion in the agenda of the Legal Subcommittee in view of the completion by the Scientific and Technical Subcommittee of its technical report on space debris (A/AC.105/720). In the view of those delegations, that report provided a sufficient basis for the review of existing norms of international law relating to the subject. However, other delegations expressed the view that the technical content of that report was still in the process of being analysed and it would therefore be premature to consider the manner in which possible legal issues relating to the topic might be addressed. The view was also expressed that it was the economic costs rather than the scientific and technical aspects that prevented a decision from being taken on the review of the legal consequences of the issue of space debris.

102. Some delegations expressed the view that, given the new requirements arising from the rapid development in space-related ventures and technologies, as well as the growing role of non-state actors in outer space activities, the inclusion in the agenda of a new single issue/item for discussion on the commercial aspects of space activities, as proposed by Argentina, would be appropriate in order to identify issues of priority in that regard that could be examined further. However, the view was expressed that the scope of the item proposed by Argentina was too broad to allow for an effective, focused discussion leading to any tangible results. The view was also expressed that the scope of the subject should be limited to the legal problems arising from the commercialization of space technology applications.

103. The Subcommittee noted that South Africa had withdrawn its proposal, on the understanding that issues relating to intellectual property rights could be considered within the framework of the proposal made by Argentina.

104. The view was expressed that a single issue/item for discussion on the advisability of developing a single comprehensive United Nations convention on the law of outer space should be included on the agenda of the Legal Subcommittee, as proposed by the Russian Federation, in order to allow for a preliminary consideration of issues relating to that possible task. However, another delegation

expressed doubts about the need for such a convention and, in particular, expressed the view that such an exercise, which would by its nature be extremely complex and involve a large number of States, was not currently warranted.

105. Some delegations expressed the view that, given its low level of ratifications and signatures, the Moon Agreement should be considered under a new agenda item, as proposed by Australia, in order to examine obstacles to its universal accession and acceptance and its effectiveness as part of the international space law regime. Other delegations expressed the view that the scope of amended item 4 of the proposed agenda was sufficiently broad to allow for the inclusion of the discussions envisaged in the proposal of Australia and there was consequently no need for an additional item on the matter.

106. Some delegations expressed the view that consideration within the Legal Subcommittee of the preliminary draft Unidroit convention on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property, as proposed by Italy, would be most valuable and timely. However, the view was expressed that a decision on whether to include it in the agenda for the Subcommittee at its fortieth session would have to be postponed until the forty-third session of the Committee on the Peaceful Uses of Outer Space, to be held in June 2000, in order to allow time for delegations to consider the results of the Third Joint Session of Unidroit, which had recently concluded.

107. The Legal Subcommittee expressed its thanks to Unidroit for reporting on its activities at the thirty-ninth session of the Subcommittee and requested that it continue to keep the Subcommittee informed of developments in that regard.

108. In accordance with the agreement reflected in document A/AC.105/C.2/L.221 (see annex III), the Legal Subcommittee agreed that current agenda item 6, "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union", should remain as a regular item on its agenda. However, the Working Group on the item would consider only matters relating to the definition and delimitation of outer space and would not consider the issue of equitable access to the geostationary orbit. That arrangement could be re-examined in due course, in accordance with the normal procedure of the Subcommittee, if further developments warranted.

109. The Legal Subcommittee agreed that current agenda item 7, "Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space", should be retained as a single issue/item for discussion on the agenda of its fortieth session.

110. The Legal Subcommittee agreed that the work plan for current agenda item 8, "Review of the status of the five international legal instruments governing outer space", had been completed at its current session and that the item should therefore not be retained on the agenda of its fortieth session.

111. The Legal Subcommittee agreed that the change to current agenda item 4 (reflected in para. 113 of the present report) was intended to confirm that discussion under the item would include the status of the treaties, review of their implementation and obstacles to their universal acceptance. The view was expressed that discussion under the agenda item should include the advisability of developing a single comprehensive United Nations convention on the law of outer space. Another delegation expressed the view that discussion under this agenda item should include matters relating to the low level of ratification of the Moon Agreement. Some delegations expressed the view that, for the above purposes, a working group might be established by the Subcommittee in accordance with its usual procedure, as appropriate, in order to examine any specific matters under agenda item 4.

112. The Legal Subcommittee conducted informal consultations, coordinated by Niklas Hedman (Sweden), with a view to reaching agreement on proposals to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the fortieth session of the Subcommittee.

113. The Legal Subcommittee agreed on the following items to be proposed to the Committee on the Peaceful Uses of Outer Space for inclusion in the agenda of the fortieth session of the Subcommittee:

(i) Regular items

1. Opening of the session, election of the Chairman and adoption of the agenda.
2. Statement by the Chairman.
3. General exchange of views.
4. Status and application of the five United Nations treaties on outer space.

5. Information on the activities of international organizations relating to space law.

6. Matters relating to:

(a) The definition and delimitation of outer space;

(b) The character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

(ii) Single issues/items for discussion

7. Review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

(iii) Agenda items considered under work plans

8. Review of the concept of the "launching State".

(iv) New items

9. Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-first session.

114. The full text of the statements made by delegations during the discussion on agenda item 10 is contained in unedited verbatim transcripts (COPUOS/Legal/T.629-637).

Notes

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* and corrigendum (A/54/20 and Corr.1), para. 90.

[2] Ibid., para. 114.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122.

[4] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* and corrigendum (A/54/20 and Corr.1), para. 100.

Annex I

Report of the Chairman of the Working Group on agenda item 6, "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union"

1. At its 622nd meeting, on 27 March, the Legal Subcommittee re-established its Working Group on agenda item 6, "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". At its 627th meeting, on 29 March, the Subcommittee elected Héctor Raúl Pelaez (Argentina) Chairman of the Working Group.

2. The Working Group on agenda item 6 had before it the report of the Legal Subcommittee on its thirty-eighth session, held in Vienna from 1 to 5 March 1999 (A/AC.105/721), annex I of which contained the report of the Chairman of the Working Group at that session.

3. In addition, the Working Group had the following documents before it for consideration:

(a) Note by the Secretariat entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States" (A/AC.105/635 and Add.1-5), submitted to the Legal Subcommittee at its thirty-seventh session;

(b) Note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/L.204), submitted to the Subcommittee at its thirty-sixth session;

(c) Working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted by Colombia to the Subcommittee at its thirty-fifth session;

(d) Two documents updated by the Secretariat in cooperation with the International Telecommunication Union (ITU), in response to a recommendation by the Working Group at the thirty-eighth session:

(i) Working paper entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary orbit' with the existing regulatory procedures of the International Telecommunication Union" (A/AC.105/C.2/L.205/Rev.1);

(ii) Conference room paper containing a compendium of documentation relating to the geostationary orbit (A/AC.105/C.2/2000/CRP.3/Rev.1).

4. While noting the work undertaken by ITU relating to the scientific and technical aspects of the utilization of the geostationary orbit, some delegations expressed the view that, as mandated by the General Assembly, the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee were the competent bodies to discuss the legal and political aspects of the geostationary orbit.

5. Some delegations expressed the view that there was a need to establish a legal regime for regulating access to and the use of the geostationary orbit, which was a limited natural resource and had *sui generis* characteristics. Such a regime should guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries.

6. Some delegations expressed the view that the legal regime applying to outer space had been established by the General Assembly in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Assembly resolution 2222 (XXI), annex), and thus the status of any satellite orbit, including the geostationary orbit, was fully covered by the provisions of that Treaty. Those delegations were of the view that with regard to

space activities for telecommunication purposes, ITU was the sole competent body responsible for regulating the use of the radio frequencies and related orbits, including the geostationary orbit, that were used by the various radio-communication services, by virtue of the provisions of article 44 of its Constitution, as amended by the Plenipotentiary Conference of ITU, held in Minneapolis, United States of America, in 1998.

7. The representative of ITU made a statement on the coordination procedures of the Union relating to the geostationary orbit.

8. The Working Group noted with appreciation the presentation, by France, with the support of Austria, Belgium, the Czech Republic, Germany, Greece, Hungary, Italy, the Netherlands, Portugal, Romania, Spain and Sweden, of a conference room paper entitled "Some aspects concerning the use of the geostationary orbit" (A/AC.105/C.2/2000/CRP.7). Subsequently the delegation of Colombia joined in sponsoring the paper.

9. On the basis of comments made during the discussion and following informal consultations among delegations, the Working Group amended and adopted conference room paper A/AC.105/C.2/2000/CRP.7.

Annex II

Report of the Chairman of the Working Group on agenda item 9, "Review of the concept of the 'launching State'"

1. At its 622nd meeting, on 27 March 2000, the Legal Subcommittee established a Working Group on agenda item 9, "Review of the concept of the 'launching State'". At its 629th meeting, on 30 March, the Subcommittee elected Kai-Uwe Schrogl (Germany) Chairman of the Working Group.

2. For purposes of information, the Working Group had before it a conference room paper entitled "Presentations on new launch systems and ventures at the thirty-seventh session of the Scientific and Technical Subcommittee, Vienna, 7-18 February 2000" (A/AC.105/C.2/2000/CRP.8).

3. At the first meeting of the Working Group, on 31 March, the Chairman recalled the tasks before the Working Group and the work plan of its deliberations as set out in the report of the Committee on its forty-second session.[a] Referring to the trends towards international launches and towards increased privatization of space transportation since the adoption of the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex, the "Liability Convention") and the Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex, the "Registration Convention"), the Chairman stated that the Working Group should consider two questions over the course of the three-year work plan. Firstly, it should consider whether the definition of the "launching State" in the Liability Convention and the Registration Convention still covered all existing activities. Secondly, it should consider what steps could be taken to improve application of the concept in the context of new developments in space transportation. The Chairman noted that the end product of the Working Group's deliberations could take a number of forms, but that the Group should not propose to change existing treaties.

4. The Working Group heard a presentation entitled "Launch activities in Japan" made by the delegation of Japan. Launches in Japan were carried out only by two government-related entities, the National Space Development Agency (NASDA), a public corporation established and regulated by the NASDA Law, and the Institute of Space and Astronautical Science, a government research institute. Future launches planned by a private company would be consigned to NASDA, which would carry out the launches. The presentation also stated that NASDA was required under the NASDA Law to purchase third-party liability insurance for each launch. For those reasons, the presentation concluded that the responsibilities of the Government of Japan under the outer space treaties were being fully performed.

5. The Working Group heard a presentation entitled "The notion of launching State in the light of current evolution of space activities" made by the delegation of France. The opinion was expressed that, although the concept of the launching State worked adequately in nearly all cases, problems might occur in a few situations resulting from new launching techniques and increasing commercialization of space activities. In particular, problems might arise from the possibility of launching from international territory, with private parties being able to adopt jurisdictions of convenience, from reusable launch vehicles, from launches from international air space and from the sale of satellites in orbit.

6. The Working Group heard a presentation entitled "New launch systems and ventures" made by the delegation of the United States of America. The presentation included a review of the launch licensing system administered by the Federal Aviation Administration of the United States. It was stated that national measures to implement existing obligations of launching States were central to any discussion in the Legal Subcommittee of new launch ventures and that national launch licensing systems should include a thorough safety review and approval process and should consider establishing levels of foreseeable risk and imposing reasonable insurance requirements or other evidence of financial responsibility. The presentation welcomed the fact that, in the light of the above considerations, the work plan of the Subcommittee concentrated on the application of the concept of the launching State by States and international organizations and upon measures

to increase adherence to the conventions relating to outer space.

7. The Working Group heard a presentation entitled "Eurockot, a new German/Russian commercial launch service provider" made by the delegation of Germany. Eurockot was a joint venture between the Khrunichev State Research and Production Space Center, a Russian state-owned company, and DaimlerChrysler Aerospace, a private German aerospace company. Registration, insurance, launch safety and liability were covered by the Launch Services Agreement, national and international laws and consultations with the Governments of Germany and the Russian Federation to ensure fulfilment of international obligations.

8. The Working Group heard a presentation by the delegation of the Russian Federation. It was stated that existing international space law might not contain comprehensive norms that would adequately govern various private activities in outer space. Since the five treaties relating to outer space were closely interrelated, any changes that might be necessary in view of recent increases in private space activity should be instituted through the development of a single, comprehensive convention on the law of outer space. Meanwhile, possible interpretation of certain concepts in the agreements relating to outer space, including "launching State", "procures the launching" and "from whose territory or facility a space object is launched", could be considered. Although authoritative interpretations could be made only by States parties, the Legal Subcommittee could play a supportive role. It was stated that priority issues to be considered in the Legal Subcommittee under the agenda item included launches from international territory, construction of space objects in outer space and transfer of ownership of a space object after launch.

9. A compilation of the presentations made to the Working Group was distributed in a conference room paper (A/AC.105/C.2/2000/CRP.12).

10. The view was expressed that the review of the concept of the "launching State" should be based not only on the Liability Convention and the Registration Convention, but also on relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex), and other agreements relating to outer space.

11. The view was expressed that, in addition to the treaties and national legislation relating to outer space, bilateral agreements were also making an important contribution to the development of international law governing responsibility and liability for launch activities.

12. Some delegations expressed the view that the Working Group could not formulate an authoritative interpretation of the concept of the "launching State", as contained in the agreements relating to outer space, since that would be the task of a conference of States parties to the relevant treaties. However, the view was also expressed that the Working Group should attempt to reach a joint understanding on the concept of the launching State. Some other delegations expressed the view that the results of the work of the Legal Subcommittee on the concept of the launching State would have considerable normative value.

13. The view was expressed that the Working Group could develop a draft interpretation of the concept of the launching State, which could be submitted to a conference of States parties to the relevant treaties, if convened.

14. The view was expressed that the Working Group should not focus exclusively on development of national legislation, but should also review other aspects of the concept of the launching State and national liability.

15. The Working Group requested the Secretariat to prepare a compilation of documents relevant to the agenda item, with the assistance, where necessary, of member States and international organizations.

16. The Working Group noted that the delegation of Sweden would present its national space law during consideration of the matter by the Working Group in 2001 under the second year of the work plan and encouraged other delegations to do the same.

17. The Working Group recommended that discussion by the Working Group under the second year of the work plan of the topic "Review of the concept of the 'launching State' as contained in the Liability Convention and the Registration Convention as applied by States and international organizations" should include consideration in greater detail of the observations made during the first year of the work plan and should hear presentations on the practice of space law, including presentations on national space legislation and other relevant texts.

Notes

[a] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 20* and corrigendum (A/54/20 and Corr.1), para. 114.

Annex III

Some aspects concerning the use of the geostationary orbit

Paper adopted by the Legal Subcommittee

1. In its related resolutions, the General Assembly has regularly endorsed the recommendations of the Committee on the Peaceful Uses of Outer Space that its Legal Subcommittee continue its examination of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of this orbit, without prejudice to the role of the International Telecommunication Union (ITU).

2. In 1996, Colombia submitted to the Legal Subcommittee at its thirty-fifth session a working paper entitled "Some considerations concerning the utilization of the geostationary orbit" (A/AC.105/C.2/L.200 and Corr.1), recommending certain principles that could be applied to the management of frequencies and orbital positions relating to the geostationary satellite orbit.

3. Following the presentation and ensuing discussion, it did not prove possible for the Legal Subcommittee to endorse the paper. At the thirty-eighth session of the Legal Subcommittee, in 1999, after an impressive presentation made by the representative of Colombia, the outcome of the discussion was that Colombia's standpoint should secure agreement on a text that would address the concerns expressed, without leading to implementation difficulties with ITU.

4. The Legal Subcommittee must find a way to reach an agreement on this important question. With this in mind and taking into account all of the points of view that have been expressed, the Legal Subcommittee adopts the recommendations made in paragraph 8 below.

5. Article 44, paragraph 196.2, of the ITU Constitution as amended by the Plenipotentiary Conference, held in Minneapolis, United States of America, in 1998, states:

> "In using frequency bands for radio services, Member States shall bear in mind that radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to those orbits and frequencies, taking into account the special needs of the developing countries and the geographical situation of particular countries."

6. Access to frequency bands other than those which are planned is at present governed by the principle of "first come, first served". That approach, while suited to developed countries, may disadvantage developing countries, especially those yet to have access to that orbit. The existing coordination procedures that apply to the non-planned bands are designed to overcome that difficulty, but they are not necessarily capable of giving full satisfaction. There is therefore a need to facilitate access to the orbit/spectrum resource by developing countries or countries yet to have access to that orbit/spectrum resource in relation to those already using it, that is, to ensure equitable access between those countries already having access to the orbit/spectrum resource and those seeking it.

7. In conclusion, the Legal Subcommittee considers that:

(a) In accordance with article 44 of the ITU Constitution, the satellite orbits and radio frequency spectrum are limited natural resources, which must be used rationally, efficiently, economically and equitably;

(b) It is necessary to facilitate equitable access to the orbit/spectrum resource;

(c) ITU has planned the use of certain frequency bands and services for the geostationary orbit;

(d) In many frequency bands and services access to frequencies and satellite orbits, including the geostationary satellite orbit, takes place according to the principle of "first come, first served";

(e) The current regulations on access to frequencies and satellite orbits in respect of bands and services may give rise to situations involving difficult processes of

coordination among developed as well as developing countries.

8. The Legal Subcommittee therefore recommends that:

(a) Where coordination is required between countries with a view to the utilization of satellite orbits, including the geostationary satellite orbit, the countries concerned take into account the fact that access to that orbit must take place, *inter alia*, in an equitable manner and according to the ITU Radio Regulations. Consequently, in the case of comparable requests for access to the spectrum/orbit resource by a country already having access to the orbit/spectrum resource and a developing country or another country seeking it, the country already having such access should take all practicable steps to enable the developing country or other country to have equitable access to the requested orbit/spectrum resource;

(b) Countries wishing to use frequencies and satellite orbits, including the geostationary satellite orbit, in the above-mentioned cases file such requests according to the relevant provisions of the ITU Radio Regulations, taking into account resolution 18 of the ITU Plenipotentiary Conference (Kyoto, 1994) and resolution 49 of the ITU World Radiocommunications Conference (Geneva, 1997) in order to guarantee effective use of the orbit/spectrum resource;

(c) Item 6 of the agenda of the Legal Subcommittee continue to remain on the agenda of the Subcommittee. However, no working group shall be convened on the issue of equitable access to the geostationary orbit. This decision could be re-examined in due course, in accordance with the Subcommittee's normal procedure, if further developments warranted;

(d) This document will be made available to ITU.